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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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FRANK DOMINIC DUNDEE,

Plaintiff,

vs.

Case No. 1:19CV01141

UNIVERSITY HOSPITALS

CORPORATION, et al.,

Defendants.

~~~~~

Deposition of

FRANK D. DUNDEE

March 10, 2020

9:30 a.m.

Taken at:

7707 Amberwood Trail

Boardman, Ohio

Cynthia Sullivan, RPR

1 were just sworn in. It may look like a
2 conversation, but it's different than a normal
3 conversation in a few important ways. One way
4 that it is different is that you must answer
5 verbally. A shake of the head or uh-huh or
6 uh-uh is not easily transcribed by our court
7 reporter here, so try to remember to say yes,
8 no, or answer verbally.

9 Secondly, you are under oath, as I
10 mentioned, so that's different than a normal
11 conversation. Thirdly, a normal conversation
12 is a two-way street. This deposition is more
13 of a one-way street. I'll ask questions, and
14 you will answer them. Do you understand that?

15 A. I do.

16 Q. Do you have any questions before we
17 get started?

18 A. No.

19 Q. Do you currently have any
20 disabilities?

21 A. Yes.

22 Q. What is your disability?

23 A. I have a motor -- upper motor
24 neuron disease called hereditary spastic
25 paraplegia.

1 Q. Is that disability a part of this
2 lawsuit?

3 A. It is not.

4 Q. Does this case here involve any
5 claims of discrimination relating to that
6 disability?

7 A. It does not.

8 Q. This case does not involve any
9 claims of failure to accommodate with regard to
10 that disability, correct?

11 A. It does not.

12 Q. There is no allegation in this case
13 that University Hospitals failed to engage in
14 the interactive process with regard to that
15 disability; am I right?

16 A. Correct.

17 Q. The first claim in your complaint
18 is for retaliation in violation of Title VII;
19 is that correct?

20 A. Yes, that is.

21 Q. What protected activity did you
22 engage in?

23 A. I filed a sexual harassment charge
24 against my immediate supervisor.

25 Q. Who was that?

1 when you first reported your charge of sexual
2 harassment to University Hospitals HR?

3 A. I'm not sure. I'm not sure if that
4 is the exact first thing.

5 Q. Do you think there might have been
6 a report that occurred prior to this email?

7 A. I'm not sure.

8 Q. You can set that aside.

9 A. Sure.

10 Q. Who retaliated against you for
11 reporting the sexual harassment?

12 A. It was Jason Glowczeski and
13 Danialle Lynce.

14 Q. Was there anyone else that you can
15 think of?

16 A. Not at this moment I can't think of
17 anyone else.

18 Q. What did Jason do to retaliate
19 against you for reporting the sexual harassment
20 complaint?

21 A. He threatened me with discharge at
22 a meeting.

23 Q. Do you recall the date of that
24 meeting?

25 A. It was August 5th, 2016.

1 Q. Did he actually discharge you?

2 A. He did not. He threatened me.

3 Q. Did he do anything else that you
4 view as retaliation for engaging in your
5 protected activity?

6 A. Could you clarify that statement,
7 please?

8 Q. Sure. You identified Jason and
9 Danialle as two people who retaliated against
10 you for engaging in protected activity. I'm
11 asking what did Jason do that in your mind
12 constitutes retaliation.

13 A. It was his threats. It was his
14 threats that I perceived as being a material
15 adverse action.

16 Q. He threatened to terminate you?

17 A. That is correct.

18 Q. What exactly did he say as best as
19 you can recall?

20 A. I think that that is documented in
21 several documents as to what he said, and I
22 think that you have them already, and I would
23 say that those documents are the most accurate
24 description of what transpired at the time.

25 Q. I understand that. Can you tell me

1 as you sit here today what you recall?

2 A. What I recall of that meeting?

3 Q. What you recall regarding Jason's
4 threats to you.

5 A. I recall Jason having a time and
6 attendance exception sheet, or at least I was
7 told that's what he had in his hand because I
8 was never presented with it, and he stated that
9 if I ever wrote another note on a sheet like
10 that or any type of note going forward, that I
11 would be subject to termination.

12 Q. Did he specify the nature of the
13 note or the tone of the note that he did not
14 want you to make in the future?

15 A. He did not.

16 Q. What did Danialle Lynce do to
17 retaliate against you?

18 A. Ms. Lynce had a pile of records
19 from my personnel file on her desk in front of
20 her, and she read from various statements that
21 I had made in past addendums to disciplines or
22 to evaluations that were substandard that were
23 realtime replies to my -- to whatever the
24 discipline was or the substandard evaluation,
25 and she picked sentences out of context, read

1 them to me, and said that if I ever made
2 statements like that again, I would be
3 terminated.

4 Q. Other than that, did she do or say
5 anything else that you view as retaliation?

6 A. Once again, the most accurate
7 description is in the documents that I did in
8 realtime. As soon as the meeting was over, I
9 went out to my car, I had a notebook in there,
10 and I started writing down, and I think it was
11 19 points I came up with, each one of those
12 19 points, and I tried to put the exact time
13 that I put them in.

14 I came home with that, and I
15 immediately transcribed it to an email that I
16 sent to the attorney that I was consulting on
17 my sexual harassment charge. So those are the
18 most accurate documents, and, once again, they
19 are in your possession.

20 Q. I understand and appreciate that,
21 and I'm going to be asking you a number of
22 questions today without those documents in
23 front of you. What I'd like you to do is try
24 to focus on what your best recollection is as
25 you sit here today. I appreciate that there

1 are documents that we could consult and we may
2 consult, but unless I ask you to refer to a
3 document, what I'm just looking for is your
4 best recollection today. Do you understand?

5 A. Yes, I understand.

6 Q. Is there anything else that you can
7 think of that Danialle Lynce did to retaliate
8 against you?

9 A. It was just a promise of increased
10 scrutiny going forward, and at one point I had
11 asked to leave the meeting because the purpose
12 of the meeting, the purported purpose of the
13 meeting the night before when Jason Glowczeski
14 invited me to this meeting that was less than
15 12 hours away that I had no idea about was to
16 discuss my sexual harassment charge, and the
17 interesting thing about that was that all
18 during their investigation, no one ever spoke
19 to me about my sexual harassment charge, and I
20 expressed that to Jason when he called. I
21 said, Yes, I'd be interested in going to a
22 meeting with you and Danialle Lynce in her
23 office.

24 When I went into her office,
25 Danialle Lynce spent about five minutes saying

1 to me that my charge wasn't timely, and I
2 should have come forward sooner with it. Then
3 after those five minutes, for the approximately
4 next 15 to 20 minutes, she kept going through
5 documents that she had in front of her and
6 telling me that if I ever write anything like
7 whatever she read again, I'm going to be
8 subject to termination.

9 I said to her at the time, I said,
10 Those were addendums that I was allowed to
11 write under UH code of conduct. I said, You're
12 telling me that I'm not allowed to write
13 something that's allowed, to write an addendum,
14 write my side of the story. Then at that point
15 I said, I recognize this as pushback against me
16 for filing my charge of sexual harassment, and
17 I would like to leave. She said, Sit down.
18 I'm not finished yet.

19 So it continued in a badgering
20 manner for the next, like I said, 15 minutes.
21 Mr. Glowczeski was silent during this time. He
22 was sitting across from me. Once again, he had
23 a document in his hand, and it was purported to
24 be the time and attendance exception form. He
25 said that if I ever wrote on that again, that I

1 would be subject to termination. I asked for a
2 copy of that, and Ms. Danialle Lynce said that
3 she would not give me a copy of it.

4 So the meeting lasted, like I said,
5 approximately 20, 25 minutes. At the end of
6 it, I ran out to my car, and I made
7 contemporaneous notes. I came home within the
8 hour, wrote to my attorney, transcribed the
9 contemporaneous notes, and that's it.

10 Q. Other than comments that Danialle
11 made during that August 5th, 2016, meeting, did
12 she take any other action or make any other
13 statements that you view as retaliatory?

14 A. I can't recall sitting here right
15 now all the statements that she made. Her
16 demeanor was very threatening. Just her
17 general demeanor was very threatening
18 especially when she told me that I was not
19 allowed to leave and to sit back down and she
20 wasn't through.

21 Q. Mr. Dundee, maybe we should have
22 the court reporter read the question back
23 because I don't think you understood what I
24 asked.

25 A. Go ahead.

1 (Record read.)

2 Q. I'm looking for comments that she
3 made other than or evidence that you have other
4 than the comments that Danialle made during
5 that meeting.

6 A. Once again, I'd refer to my
7 contemporaneous notes which I don't have in
8 front of me right now, so I can't be
9 100 percent sure if she didn't say something
10 else or she did. I do recall what I just said.
11 So I'm not saying that my memory of the
12 occasion is as accurate as what my
13 contemporaneous notes say. So whatever I tell
14 you now, I don't recall her saying anything
15 else, but she may have said something else that
16 I took down in contemporaneous notes.

17 Q. Other than the August 5th, 2016,
18 meeting, which I'd like you to set aside for
19 this moment, did Danialle Lynce do or say
20 anything that you view to be retaliatory?

21 A. Could you clarify that? Like what
22 time period are we talking about?

23 Q. Anytime after August 5th, 2016.

24 A. Yes, she did.

25 Q. What else did she do that was

1 retaliatory?

2 A. On June 26th, 2017, she called me
3 to her office. I had just returned from
4 vacation in Florida. It was 9:00 p.m. at
5 night, and the phone rang. I had just got off
6 an airplane about an hour earlier, and I had
7 rushed to work.

8 The phone rang, and it was human
9 resources, and Danialle Lynce said that -- once
10 again, I can't -- I may be paraphrasing. She
11 said that could I come upstairs because I had
12 committed an infraction, and they were going to
13 have a discipline hearing at that time at 9:00
14 at night, and I went upstairs, and that was
15 that. I went to the discipline hearing, and
16 that was the answer to your question.

17 Q. What happened at the discipline
18 hearing that was retaliatory?

19 A. I was disciplined in a final step
20 over words that I had written in an email to HR
21 representative Rebecca Besselman, in two emails
22 specifically, over phrases. In the one email
23 referring to Ms. Besselman who was a friend of
24 mine I said you're a good kid, and in another
25 email in which I was referring to a young

1 pharmacist who was assigned to help me
2 implement cost saving suggestions that -- three
3 cost saving suggestions that I had given to
4 University Hospital, and I was explaining to
5 Rebecca in that email that this young man
6 really didn't understand how to implement these
7 suggestions and could she help me.

8 I said he's -- and I didn't want to
9 get him in trouble for saying that. I said,
10 He's a pup with little experience, a nice boy
11 but -- and they wrote me up for those three
12 phrases. They said it violated their diversity
13 policy.

14 Q. Is there anything else that
15 Danialle Lynce did that you view as
16 retaliatory?

17 A. The promise of increased scrutiny
18 in the meeting of 8-5-16 was an open-ended
19 threat. So for the entire time period going
20 forward, I felt I was under increased scrutiny
21 because it was promised that I would be under
22 increased scrutiny.

23 So Danialle Lynce didn't have to
24 actually in my opinion do anything to me. She
25 had put this threat over my head going forward,

1 and it affected every day of my life going
2 forward on the job after that.

3 Q. Is there anything else that you can
4 think of as you sit here today that Danialle
5 Lynce did or said that is retaliatory?

6 A. Nothing else.

7 Q. What about Jason? Other than
8 statements made at the August 5th, 2016,
9 meeting, is there anything that Jason did or
10 said that you view as retaliatory?

11 A. No.

12 Q. We've talked about Jason. We've
13 talked about Danialle. Have you thought of
14 anyone else that did or said anything during
15 your employment that you view as retaliatory?

16 A. Ms. Lerman was part of the
17 discipline hearing on June 26th, 2017, so for
18 her participation in that meeting, I would view
19 it as retaliation.

20 Q. Is there anything else that Rachael
21 Lerman did other than participate in that
22 June 26th discipline meeting and issue the
23 corrective action to you that you view as
24 retaliatory?

25 A. At this moment I can't think of

1 anything.

2 Q. With regard to Jason's conduct at
3 the August meeting, why do you believe that
4 there was a connection between your filing of a
5 sexual harassment claim and Jason's conduct?

6 A. The purported meeting when he
7 called on August 4th, 2016, and he called
8 around 10:00 at night, and he asked if I
9 would -- and I had this on speaker phone, and
10 it was witnessed by a fellow pharmacist, Phil
11 Snyder. He said, Frank, would you be able to
12 come to a meeting tomorrow morning with
13 Danialle Lynce? I said, Yes. I go, But what
14 is the meeting about? He says, It's about the
15 charge that you filed. I said, Yes, I would be
16 glad to attend a meeting because I've never met
17 with anybody over it. I says, I understand
18 that they dismissed it. Jason said that that
19 was what the meeting was about.

20 When I went in there, like I said,
21 five minutes of the meeting was about
22 discussing the untimeliness of my charge, and
23 then the rest of the meeting was spent
24 threatening me.

25 Q. So other than the fact that those

1 two topics were discussed by Jason in the same
2 meeting, is there anything in your mind that
3 connects his actions with your protected
4 activity?

5 A. It's all connected to the protected
6 activity because the basis of the meeting was
7 to discuss that protected activity. So it's
8 all connected to that. He never said we're
9 going to discuss -- we're going to have a
10 discipline hearing or anything like that. He
11 just said the meeting was about discussing my
12 charge of sexual harassment against Ms. Rachael
13 Lerman. There was no discussion at
14 this -- there was no preview that this was
15 going to be any type of meeting in which I was
16 going to be disciplined in any way.

17 Q. With regard to Danialle Lynce, what
18 is it that creates a connection in your mind
19 between your protected activity and her conduct
20 and comments?

21 A. I will repeat the same thing that I
22 repeated for Jason. The meeting was supposed
23 to be about a discussion of my sexual
24 harassment charge, and it turned into for the
25 majority, the vast majority of the time, into a

1 meeting, a vitriolic meeting in which I was
2 threatened.

3 Q. What about Rachael Lerman, what
4 connects her conduct with your protected
5 activity in your mind?

6 A. Her participation in the June 26th,
7 2017, discipline hearing.

8 Q. Why is her participation in that
9 meeting connected in your mind to your
10 protected activity?

11 A. Why is it? Because it wasn't a
12 coincidence that on June 26th, 2016, I filed
13 the charge of sexual harassment. It was one
14 year to that date, and that wasn't lost on me.
15 It was also the preposterous nature of what I
16 was being disciplined for.

17 Q. Now, we've just seen in Exhibit 1
18 that the first time you raised a sexual
19 harassment claim that we have documentary
20 evidence of was on June 23rd, 2016; is that
21 right?

22 A. I wasn't sure of if that was first
23 or second or what. I'm not sure of that, so I
24 can't say that for sure. I know for sure my
25 complete charge was on June 26th where I really

1 actors, all of the people who engaged in
2 retaliation, and all of the conduct that you
3 believe was retaliatory?

4 A. I'm not sure if we covered
5 everybody. We've covered everybody that I have
6 in my motion for summary judgment. There may
7 be other people who were involved behind the
8 scenes that may have been revealed in a
9 deposition. However, I chose not to depose
10 anybody because I think that all that it would
11 add was noise. So as far as my summary
12 judgment is concerned, we have discussed the
13 people.

14 Q. Thank you. I want to move next to
15 your ADA claim, specifically that your referral
16 to the Employee Assistance Program violates the
17 ADA. Are you familiar with that claim?

18 A. Yes, I am.

19 Q. What is it about your referral to
20 the EAP that you find objectionable?

21 A. Once again, you want me to state
22 something that's -- that's already stated in my
23 summary judgment and in other documents that I
24 stated more clearly than I'm capable of stating
25 right now. So anything that I would say right

1 Q. Has your treatment plan changed
2 since 2018 when you performed the genetic test?

3 A. No, it has not.

4 Q. Who prescribes the muscle relaxants
5 that you use to treat your HSP?

6 A. Dr. Bobovnyik.

7 Q. Does she also prescribe
8 prescription level laxatives or any other
9 medications?

10 A. No. Pretty much the laxatives that
11 I would use are all over the counter.

12 MS. ISRAEL: Off the record for a
13 minute.

14 (Discussion off record.)

15 Q. During your appointment with David
16 Riccardi, did he perform any tests or
17 procedures on you?

18 A. No, he did not.

19 Q. What about during your appointment
20 with Jill Fulton, did she perform any tests or
21 procedures on you?

22 A. No, she did not.

23 Q. We talked about the increased
24 effects of your HSP on you after your
25 appointment with David Riccardi, and you

1 Then the biggest thing he hit me
2 with was the following week he had me set up
3 for a three-hour psychiatric evaluation, and
4 that floored me. That, I was surprised that I
5 was able to even get up from the table after
6 that because it was such a shock to my system,
7 and I was just so surprised by it, and it just
8 like -- it just was really very traumatic to
9 hear that I'm going to a three-hour psychiatric
10 examination over those phrases. I couldn't
11 believe it.

12 Q. Did you ever attend the three-hour
13 psychiatric evaluation?

14 A. I did not.

15 Q. Did University Hospitals ever take
16 any action against you for your refusal to
17 attend the three-hour psychiatric evaluation?

18 A. To this point University Hospitals
19 has not taken any action, but it hangs over my
20 head since then because they never said that
21 they won't take action. So I am still
22 concerned about it, that they could say to me
23 at any time you didn't get to these sessions
24 and you didn't go to this psychiatric
25 evaluation. So I am still concerned over that.

1 They never said, oh, you don't have to go to
2 these things. They never said that.

3 Q. So the two things that David
4 Riccardi presented you with at the end of your
5 meeting were continued counseling sessions and
6 the three-hour psychiatric evaluation; is that
7 right?

8 A. And the release forms, yes.

9 Q. Did you sign the release forms?

10 A. I signed all the release forms but
11 the one that he wanted to -- once again, like
12 you want to do, he wanted to get my medical
13 release from my doctor, and I refused that.

14 Q. Did University Hospitals take any
15 action against you for your refusal to sign the
16 medical release form?

17 A. To this point they have not taken
18 any action against me.

19 Q. You did not attend any further
20 counseling sessions with David; am I right?

21 A. That is correct.

22 Q. I want to turn now to your third
23 claim for relief which is discrimination under
24 the ADA. Are you familiar with that claim?

25 A. Yes, I am.

1 stated in the request. If you look at Request
2 for Admission No. 4, the request says, "You
3 were not demoted following your complaint of
4 alleged sexual harassment by Rachael Lerman."
5 Your response was no.

6 Do you mean that you are denying
7 the truth of that or that, no, in fact you were
8 not demoted?

9 A. No, in fact I was not demoted. So
10 I guess it should have been yes. I'm sorry.

11 Q. That's fine. That's what I
12 suspected. I just want to clarify your answers
13 to make sure that I understand what you're
14 indicating.

15 A. Yeah.

16 Q. I want to look at Request for
17 Admission No. 6. You did not experience a
18 reduction in pay or benefits following your
19 complaint of sexual harassment; is that
20 correct?

21 A. That is correct.

22 Q. With regard to No. 8, University
23 Hospitals has not restricted you in any way or
24 at any time from performing your job duties; is
25 that correct?

1 A. That is correct.

2 Q. That's it for that document. Thank
3 you. You can set them on a chair or whatever
4 is easiest for you.

5 A. Thank you. Do you want me to do
6 them face down?

7 Q. No. Next I'm going to hand you
8 what's been marked as Defendant's Exhibit 3.

9 - - - - -

10 (Thereupon, Deposition Exhibit 3,
11 the Defendant's First Set of
12 Interrogatories to Plaintiff, was
13 marked for purposes of
14 identification.)

15 - - - - -

16 Q. Do you recognize that document?

17 A. I kind of don't.

18 Q. Again, I'll direct you to the
19 answers under each interrogatory in bold and
20 underlined. Do those look like the answers you
21 provided on this document?

22 A. Yes, they do look like my answers.

23 Q. If you could turn the page to
24 Interrogatory No. 2 on page 2, if this case
25 proceeds to trial, what people do you

1 A. Just because of my discussions.

2 Q. Is there anyone else that you can
3 think of?

4 A. Firsthand knowledge? At this
5 moment I can't think of anyone else.

6 Q. I'd like you to look now at your
7 response to Interrogatory No. 6. That
8 interrogatory asks you to describe occurrences
9 of being subjected to a hostile work
10 environment. In this answer you refer to your
11 personnel file and state, "Every
12 formal/informal discipline was a manufactured
13 event intended to harass the plaintiff."

14 Is it your contention that none of
15 the discipline that you've received while
16 employed at University Hospitals was warranted?

17 A. I would say that none of it was
18 warranted. I have to make that statement.
19 None of it was warranted.

20 Q. Setting aside the formal and
21 informal discipline that you received, what
22 else can you tell me about the hostile work
23 environment that you experienced? What made it
24 hostile?

25 A. Well, the scrutiny that I was under

1 Jones who was over everybody there and who I
2 had written to in the past about a hostile work
3 environment as well, I may have found out who
4 was complicit in this ever.

5 Once again, when I put my motion
6 for summary judgment in, I didn't want the
7 excess noise. It didn't matter who was
8 complicit in it I had decided. That would just
9 be extraneous noise. I felt I had enough
10 evidence and based on the law that my motion
11 for summary judgment was enough without that
12 other stuff.

13 Q. Other than the people that we've
14 talked about today, are you aware of anybody
15 else at University Hospitals who was
16 responsible for creating a hostile work
17 environment or retaliating against you?

18 A. At this moment I'm not aware.

19 - - - - -

20 (Thereupon, Deposition Exhibit 4, a
21 Document Bates Labeled UH-Dundee
22 0036, was marked for purposes of
23 identification.)

24 - - - - -

25 Q. I'm going to hand you next what's

1 been marked as Defendant's Exhibit 4. Do you
2 recognize that document?

3 A. When did I write this? There were
4 so many things in the beginning. Yes, I do
5 remember this. I do remember this.

6 Q. What is Exhibit 4?

7 A. It's my charge of -- is this age
8 discrimination? Yes. It was an age
9 discrimination lawsuit that I filed -- not
10 lawsuit, an age discrimination complaint I
11 filed with the Cleveland EEOC.

12 Q. Is that your signature at the
13 bottom?

14 A. Yes, it is.

15 Q. This indicates that you submitted
16 this charge on November 12th, 2013. Is that
17 consistent with your recollection?

18 A. Yes, it is.

19 Q. This charge relates to a pamphlet
20 for EAP that you found in your locker in
21 October of 2013; is that right?

22 A. Correct. But it also spoke to the
23 hostile work environment as well.

24 - - - - -

25 (Thereupon, Deposition Exhibit 5, a

1 is that right?

2 A. That is correct.

3 Q. Do you know if this intake
4 questionnaire became a formal EEOC charge?

5 A. It did.

6 Q. You can set that aside.

7 - - - - -

8 (Thereupon, Deposition Exhibit 7, a
9 Document Bates Labeled UH-Dundee
10 0212, was marked for purposes of
11 identification.)

12 - - - - -

13 Q. Take a look at Defendant's
14 Exhibit 7, and let me know if you've seen that
15 document before.

16 A. Yes, I have.

17 Q. Is that your signature at the
18 bottom?

19 A. Yes, it is.

20 Q. What is this document?

21 A. I filed with the Ohio Civil Rights
22 Commission a charge of discrimination, once
23 again, it's under the Title I of the ADA, for
24 being forced to submit to mandatory EAP
25 counseling sessions.

1 Q. Did you sign and submit this charge
2 of discrimination on September 14th, 2017?

3 A. I don't think so. Wait a second.
4 I don't think I did. I thought this was more
5 in the spring of 2018. Well, what's that say?
6 9-14-17.

7 Q. If you want to read silently to
8 yourself so she doesn't have to try to take
9 down your mumbles, that would be helpful.

10 A. I'm so sorry. I must have filed
11 this at 9-14-17, yes.

12 - - - - -

13 (Thereupon, Deposition Exhibit 8, a
14 Document Bates Labeled UH-Dundee
15 0276 through 0279, was marked for
16 purposes of identification.)

17 - - - - -

18 Q. I'm handing you Defendant's
19 Exhibit 8. Do you recognize that document?

20 A. Yes, I do.

21 Q. What is it?

22 A. Yeah. This document doesn't have
23 anything to do with my lawsuit. This is a
24 document I filed because I felt that the
25 hospital wasn't discussing an accommodation for

1 my handicap in good faith, but this has nothing
2 to do with the lawsuit that we're discussing.

3 Q. Is this your signature on the last
4 page?

5 A. Yes, it is.

6 Q. This is a charge of discrimination
7 for disability discrimination signed by you and
8 submitted on September 2nd, 2018; is that
9 right?

10 A. Yes, but I withdrew this.

11 Q. So no formal charges?

12 A. No. I withdrew that. Heather
13 Harmon had made some inroads in our
14 discussions, and I told her because she had
15 shown such good faith that I would drop the
16 charge.

17 MS. ISRAEL: Let's go off the
18 record for a minute.

19 (Brief recess.)

20 - - - - -

21 (Thereupon, Deposition Exhibit 9, a
22 Document Bates Labeled UH-Dundee
23 0092, was marked for purposes of
24 identification.)

25 - - - - -

1 identification.)

2 - - - - -

3 Q. I'm handing you next Exhibit 10. I
4 want you to focus on the lower right-hand
5 corner here. There is a little bit of cutoff,
6 but if you could tell me if you recognize this
7 handwriting here and what does it say.

8 A. "She forced me to sign this.
9 Help."

10 Q. Whose handwriting is that?

11 A. That's me.

12 Q. You wrote that note on that
13 timekeeping exception log?

14 A. Yes, I did.

15 - - - - -

16 (Thereupon, Deposition Exhibit 11, a
17 Document Bates Labeled UH-Dundee
18 0118, was marked for purposes of
19 identification.)

20 - - - - -

21 Q. I'm going to hand you next
22 Defendant's Exhibit 11 and direct your
23 attention to this highlighted handwriting here
24 in the middle. If you could take a look at
25 that, and let me know if you can read it.

1 A. Yes. That's mine.

2 Q. What did you write on that log?

3 A. I said, "Not sure if she left then.
4 I wasn't at the time clock. She may be lying."

5 Q. Who were you referring to in that
6 note?

7 A. Susan Thabit.

8 Q. Okay. Finally, I'm going to hand
9 you Defendant's Exhibit 12.

10 - - - - -

11 (Thereupon, Deposition Exhibit 12, a
12 Document Bates Labeled UH-Dundee
13 0152, was marked for purposes of
14 identification.)

15 - - - - -

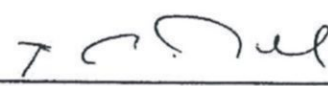
16 Q. There is a highlighted typed
17 section here. If you could read that and let
18 me know if you answered that comment on the
19 log.

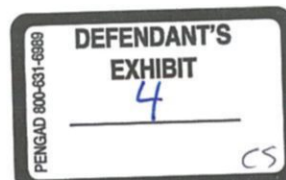
20 A. Let's see what it says. Where are
21 you showing me? I'm sorry.

22 Q. It's no problem. Here, this
23 highlighted typed section right in the middle
24 of the exhibit (indicating).

25 A. Yes. Yes, that would be -- yes,

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 532-2014-00108	
Ohio Civil Rights Commission and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) Frank Dundee		Home Phone (Incl. Area Code) (330) 726-2662	Date of Birth 08-17-1953
Street Address City, State and ZIP Code 7707 Amberwood Trail, Boardman, OH 44512			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name UNIVERSITY HOSPITALS		No. Employees, Members 500 or More	Phone No. (Include Area Code) (440) 285-6000
Street Address City, State and ZIP Code 13207 Ravenna Road, Chardon, OH 44024			
Name <div style="text-align: center;"> EEOC CLCC CART UNIT </div>		No. Employees, Members	Phone No. (Include Area Code)
Street Address City, State and ZIP Code <div style="text-align: center;"> NOV 13 2013 RECEIVED </div>			
DISCRIMINATION BASED ON (Check appropriate box(es)) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest 08-26-2013 Latest 10-04-2013 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I was hired as a Staff Pharmacist in April of 2010. In the last 18 months, managers have created culture of divisiveness within the department, based on age, that demeans and threatens the role and continued employment of the older, staff pharmacists, as providers of care.</p> <p>On October 4, 2013, I discovered a pamphlet for the EAP in my locker. Ms. Lerman, with the approval of Ms. Lynce, was responsible. I viewed this action as a grievous personal affront to my dignity and character, and as a method of harassment. The action, along with a pattern of intimidating behavior, has been emotionally damaging. Ms. Lynce, as an agent of the human resource department of UH, was negligent by not stopping such behavior. Ms. Lerman, as my supervisor, is empowered to take tangible employment actions like hiring, firing, promoting, demoting or reassigning employees to significantly different responsibilities.</p> <p>I believe I have been subjected to different terms and conditions of employment, due to my age, 60, in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> 11-12-13 <small>Date</small> </div> <div style="text-align: center;">  <small>Charging Party Signature</small> </div> </div>		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE <small>(month, day, year)</small>	



UH-Dundee 0036

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: _____ Agency(ies) Charge No(s): _____ <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 533-2017-01275	
Ohio Civil Rights Commission and EEOC <small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) Mr. Frank D. Dundee		Home Phone (Incl. Area Code) (330) 726-2662	Date of Birth 1953
Street Address 7707 Amberwood Trail, Boardman, OH 44512			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name UNIVERSITY HOSPITALS GEUAGA MEDICAL CENTER		No. Employees, Members 500 or More	Phone No. (Include Area Code) (440) 285-6000
Street Address 13207 Ravenna Road, Chardon, OH 44024			
Name _____		No. Employees, Members _____	Phone No. (Include Area Code) _____
Street Address _____			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify) _____		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 06-26-2017 06-26-2017 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I have been employed by the above-named Respondent since 2010 as a Staff Pharmacist. On 6/26/17, I received a final written warning for phrases written in two emails to a HR representative regarding implementation of suggestion for the innovation Summit. The written phrases were deemed to violate Respondent's Code of Conduct by the Head of HR Danialle Lynce and the Pharmacy Manager, Rachael Lerman. Both were not recipients of the email.</p> <p>Under threat of termination, I was mandated to attend counseling sessions in the EAP program. The EAP counseling sessions amounted to a medical examination that was not related to my job nor consistent with the Respondent's business needs under EEO rule and the ADA.</p> <p>I believe I am being discriminated against in violation of Title I of the Americans with Disabilities Act of 1990, as amended, (ADA). I also believe I am being retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended, (Title VII) due to my participation in a protected activity.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT _____ SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Date 08-14-19		Charging Party Signature [Signature]	

PENGAD 800-631-6868

**DEFENDANT'S
EXHIBIT**
7

CS

UH-Dundee 0212

**OHIO CIVIL RIGHTS COMMISSION
CHARGE OF DISCRIMINATION (EMPLOYMENT)**

ALH

OCRC Case Number: CLE B4 (44821) 08222018

EEOC Case Number:

Your Name	Company Name	
Frank Dundee	University Hospitals Geauga Medical	
Your Street Address	Company Street Address	
7707 Amberwood Trail	13207 Ravenna Rd	
City, State and Zip	City, State and Zip	
Boardman, Ohio 44512	Chardon, Ohio 44024	
Telephone Number	County (if located in Ohio)	
3303988274	Gauga	
Alternate Number (Optional)	Telephone Number	
3307262662	4402856000	
Email Address (Optional)	# of Employees	Date of Hire
fdundee@gmail.com	28.000	5/1/2010

RECEIVED

SEP 06 2018

OCRC - INTAKE
CLEVELAND

Dates of Discrimination (MM/DD/YYYY): 3/21/2018 thru 8/21/2018

I was discriminated on the basis of :

- ☐ Race/Color
- ☐ Sex
- ☒ Disability (DO NOT LIST DISABILITY)
- ☐ Age (over 40 years old only)
- ☐ Religion
- ☐ National Origin/Ancestry
- ☐ Military Status
- ☐ Retaliation (for protesting discrimination)

Please identify how you are a member of the category you marked on the left: (If you marked **AGE**, please list your **BIRTH DATE**. If you have marked **DISABILITY**, **DO NOT IDENTIFY** your disability.)
I have a disability

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AUG 22 2018

OCRC - INTAKE
CLEVELAND

Please read and review the following:

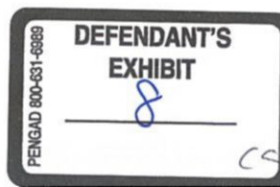
I have not commenced with any action under sections 4112.14 or 4112.02(N) of the Ohio Revised Code with respect to the subject matter of the affidavit. I understand that upon filing of this charge with the Ohio Civil Rights Commission, I am barred from instituting any such civil action and that any monetary award or financial benefit I may receive may be limited to back pay and/or restoration of employment fringe benefits and may not include other damages to which I may be entitled as a result of such civil action.

I am filing a charge alleging AGE DISCRIMINATION and I have read and understand the above information.

☒ I am NOT filing a charge alleging AGE DISCRIMINATION and this does not apply to me.

Page: 1 of 4

UH-Dundee 0276



Charging Party: Frank Dundee

ALH

Case Number: CLE B4 (44821) 08222018

Act of Discrimination #1

Date of Discrimination (MM/DD/YYYY): 08/21/2018

I was subjected to (mark only one issue):

- a denial of promotion
- a forced resignation
- demotion
- denial of hire
- ☒ denial of a reasonable accommodation
- different terms and conditions of employment
- discharge/termination
- discipline
- harassment/sexual harassment
- layoff
- other

I believe it was because of my:

- Race/Color
- Sex
- ☒ Disability
- Age
- Religion
- National Origin/Ancestry
- Military Status
- Protected activity (retaliation)

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OCRC - INTAKE
CLEVELAND

If you have marked "other", please briefly describe the discriminatory act:

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CLEVELAND

The reason given by the company for this action is:

The company, University Hospitals, refused to informally discuss my request(s) for a reasonable accommodation, even though my disability is obvious, forcing me to comply with their internal policy which violates Title I of the ADA rules on reasonable accommodation.

I was given this reason by (name and position):

Debbi Templin, CPDM, ARM Director, Disability & Occupational Risk Control Services, Heather Harmon, JD, PHR, SHRM-CP, Vice President, Human Resources & Organizational Development
University Hospitals

I am aware of others treated more favorably than me including:

Lisa Farah

I believe that this was discrimination because:

I am perceived as a troublesome employee, in spite of the fact that my job performance is exemplary, both objectively and subjectively, when compared across all University Hospitals facilities. I believe this discrimination is retaliation for speaking truth to power; for making a complaint to OSHA and complaints to the EEOC, over a period of years. Because of this, my request for reasonable accommodation was rejected without discussion, through an internal University Hospitals policy.

Charging Party: Frank Dundee

ALH

Case Number: CLE B4 (44821) 08222018

Act of Discrimination #2 (Optional)

Date of Discrimination (MM/DD/YYYY):

I was subjected to (mark only one issue):

a denial of promotion
a forced resignation
demotion
denial of hire
denial of a reasonable accommodation
different terms and conditions of employment
discharge/termination
discipline
harassment/sexual harassment
layoff
other

I believe it was because of my:

Race/Color
Sex
Disability
Age
Religion
National Origin/Ancestry
Military Status
Protected activity (retaliation)

If you have marked "other", please briefly describe the discriminatory act:

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SEP 06 2018

OCRC - INTAKE
CLEVELAND

The reason given by the company for this action is:

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CLEVELAND

I was given this reason by (name and position):

I am aware of others treated more favorably than me including:

I believe that this was discrimination because:


Charging Party: Frank Dundee

ALH

Case Number: CLE B4 (44821) 08222018

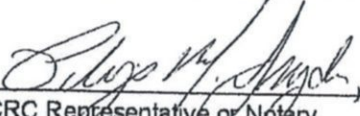
Please check to indicate you have read and agreed to the statements below.

- ✓ I understand that I will not be able to sign this form on-line. A copy will be mailed out to me for a notarized signature. An investigation will not begin until the Ohio Civil Rights Commission receives a signed and notarized charge from me.
- ✓ I declare under penalty of perjury that I have read the above charge and that it is true to the best of my knowledge, information and belief. I will advise the agency/agencies if I change my address or telephone number and that I will cooperate fully in the processing of my charge in accordance to their procedures.


Charging Party

9.2.2018
Date

Subscribed and sworn to before me on this 2nd day of September of 20 18

, Esq.
OCRC Representative or Notary
Philip M. Snyder, Esq.
Attorney At Law, OH 0071672
Notary Public, State of Ohio
My Commission has no
expiration date 3147.03 R.C.

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OCRC - INTAKE
CLEVELAND

RECEIVED

AUG 22 2018

OCRC - INTAKE
CLEVELAND

7/2016-New Policy goes into effect. See memo for 7/10/16 switch to new KRONOS TIMEKEEPING EXCEPTION LOG hospital + dept processes. See Rachael for your blinded emp # for list on door.

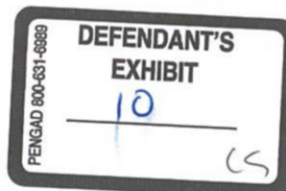
Department Name/# Pharmacy

130-48030 RX
130-48000
130-48035

Pay Period Start
Pay Period End

DATE	EMPLOYEE NAME	MISSED PUNCH		OFF-SITE HOURS		Any other exceptions PTO, Jury Duty, Bereavement, Float, etc. Pay Code Hours	APPRO VAL
		IN TIME	OUT TIME	IN TIME	OUT TIME		
7-8-16	Tina					Chemo & omnicel No lunch - dinner	
7-8-16	Laura Sarkis	2pm	9:15pm			1 hr schedule	
7-9-16	Susan					No lunch (evening)	
7-9-16	Glen					No lunch	
7-11	Rich					No lunch	
7-11	Nich					No lunch	
7-11	Susan					No lunch	
7-11	Rich					Left at 10:15	
7-11	Susan					Left at 10:20	FD
7-11	Tina					No lunch	

She forced this to 9:15 a.m.!



7/2016 - New Policy goes into effect. See memo for 7/10/16 switch to new KRONOS TIMEKEEPING EXCEPTION LOG processes. See Rachael for your blinded emp # for list on door.

Department Name/ # Pharmacy

 130-48030 RX
 130-48000
 130-48035

 Pay Period Start
 Pay Period End

DATE	EMPLOYEE NAME	MISSED PUNCH		OFF-SITE HOURS		Any other exceptions PTO, Jury Duty, Bereavement, Float, etc. Pay Code Hours	APPRO VAL
		IN TIME	OUT TIME	IN TIME	OUT TIME		
7-10-16	Rich					6 am in / no 8 am	
7-11-16	Chen					No lunch	
7-12	Susan					No lunch	
7-12	Susan					No lunch	
7-12	Susan					No lunch	
7-13	Shelie					No lunch	
7-14	Anna					No lunch	
7-13	Mate Soric					No lunch	
7-14	Sami					No lunch	
7-16-16	Laina Sarkis					No lunch	
7-17-16	Laina Sarkis					No lunch	
7-17	Lisa W					No lunch	

 7-17-16
 7-15

 PTO - 8 hr
 Derek

 left early / Sunday
 10 min
